

21 April 2023

[REDACTED]

Email: [REDACTED]

Tēnā koe [REDACTED]

## Official Information Act Request

Thank you for your request of 28 March 2023, under the Official Information Act 1982, for the following information:

1. *How many years has your entity been affiliated with Toitū?*
2. *How much does it cost your entity to maintain certification, including fees from Toitū and costs related to meeting these requirements?*
  - a. *If different, what were the initial up-front costs to achieve compliance with certification standards and achieve certification in the first place?*
3. *Does the entity plan to achieve CarbonZero/Carbon Positive certification, and if so, why, and under what timeframe?*
  - a. *If not, why?*
4. *Has the entity considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū?*
5. *Please provide copy of any contracts signed, any other applicable conditions or criteria your agency must abide by as part of accreditation.*

## Responses

1. How many years has your entity been affiliated with Toitū? **2 years**
2. How much does it cost your entity to maintain certification, including fees from Toitū and costs related to meeting these requirements? **\$32,000 per annum**
3.
  - a. If different, what were the initial up-front costs to achieve compliance with certification standards and achieve certification in the first place? **\$33,410 (inclusive of the initial setup fee of \$1,410)**
4. Does the entity plan to achieve CarbonZero/Carbon Positive certification, and if so, why, and under what timeframe?

If not, why? NZQA's long-term goal is to achieve a significant reduction in carbon emissions, and if practical be carbon neutral, subject to financial considerations.

5. Has the entity considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū? NZQA is satisfied with its current partnership with Toitu and is not exploring any other alternatives.

6. Please provide copy of any contracts signed, any other applicable conditions or criteria your agency must abide by as part of accreditation.

A copy of the contract signed with Toitū is attached. Some contact details have been withheld under section 9(2)(a) for privacy reasons.

NZQA is not aware of any public interest considerations outweighing the decision to withhold information under section 9 of the Act.

As part of the commitment to open and transparent government, NZQA is proactively releasing responses to Official Information Act requests which are of public interest. NZQA intends to publish this response on its website with the next quarterly release of documents. Your name and contact details will be removed before publication.

If you require further assistance or believe we have misinterpreted your request, please contact Elizabeth Templeton in the Office of the Chief Executive, email [elizabeth.templeton@nzqa.govt.nz](mailto:elizabeth.templeton@nzqa.govt.nz) or telephone (04) 463 3339.

If you are dissatisfied with our response, you have the right, under section 28(3) of the Official Information Act 1982, to lodge a complaint with the Office of the Ombudsman at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz). You can also telephone 0800 802 502 or write to the Ombudsman at PO Box 10152, Wellington, 6143.

Nāku nā



Dr Grant Klinkum  
Pouwhakahaere/Chief Executive

# Contract for Services

## Contract Details

Toitū Environmental Services Agreement
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### The Parties

#### The Buyer:

New Zealand Qualifications Authority
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NZBN 9429041909980
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125 The Terrace, Wellington CBD, New Zealand
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and

#### The Supplier:

Enviro-Mark Solutions Limited (trading as Toitū Envirocare)
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NZBN 9429031348959
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54 Gerald Street, Lincoln 7608, New Zealand
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### The Contract

#### Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

#### Parts of this Contract

The documents forming this Contract are:

1. **Contract Details:** This section
2. **Schedule 1:** Contract Details and Description of Services
3. **Schedule 2:** [GMC Form 1 SERVICES | Schedule 2 \(3rd Edition\) \(procurement.govt.nz\)](#) (Crown) / [GMC Form 2 SERVICES | Schedule 2 \(3rd Edition\) \(procurement.govt.nz\)](#) (non-Crown)
4. Any other attachments described at Schedule 1 which may include the following Specific Terms:
  - 4.1 Attachment 1 to Schedule 1 – Certification Terms
  - 4.2 Attachment 2 to Schedule 1 – Programme Marks Licence Terms
  - 4.3 Attachment 3 to Schedule 1 – Emanage SaaS Licence Terms

#### How to read this Contract

- Together the above documents form the whole Contract.
- Clause numbers in Schedule 1 refer to clauses in Schedule 2 unless identified otherwise.
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section of Schedule 2 and in the relevant Definitions sections in each of Attachments 1, 2, 3 and 4 to Schedule 1.

- Where a word starting with a capital letter in Attachments 1-4 of Schedule 1 does not have a special meaning in the relevant Attachment in which the word appears, then the meaning set out in the Definitions section of Schedule 2 will apply.
- In the event of inconsistency, the Specific Terms in Attachments 1-4 of Schedule 1 will take precedence and will prevail over the terms set out in Schedule 2.

## Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

**Signed for and on behalf of the New Zealand Qualifications Authority**

**Signed for and on behalf of Enviro-Mark Solutions Limited (trading as Toitū Envirocare)**



(signature)

(signature)

**Name:** Cheon Ling  
**Position:** Chief Financial Officer  
**Date:** 27 Jan 2022

**Name:** Sean O'Flaherty  
**Position:** Head of Sales  
**Date:** 23/12/2021

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# Schedule 1

## Description of Services

### **Contract Management and Personnel**

<b>Start Date</b>	On the date both parties have signed this Contract	<i>Reference Schedule 2 clause 1</i>
<b>End Date</b>	This Contract will continue in force until terminated in accordance with replacement clause 1.2 of Schedule 2	<i>Reference Schedule 2 clause 1</i>

### **Contract Managers**

*Reference Schedule 2 clause 4*

	<b>Buyer's Contract Manager</b>	<b>Supplier's Contract Manager</b>
<b>Name:</b>	Cheon Ling	Sean O'Flaherty
<b>Title / position:</b>	Chief Financial Officer	Head of Sales
<b>Address:</b>	125 The Terrace, Wellington CBD	Suite 9, Level 2, 20 Augustus Terrace
<b>Phone:</b>	[REDACTED]	[REDACTED]
<b>Email:</b>	Cheon.ling@nzqa.govt.nz	[REDACTED]

### **Addresses for Notices**

*Reference Schedule 2 clause 14*

	<b>Buyer's address</b>	<b>Supplier's address</b>
<b>For the attention of:</b>	Cheon Ling	As above
<b>c.c. Contract Manager</b>		
<b>Delivery address:</b>	125, The Terrace, Wellington CBD	
<b>Postal address:</b>	PO Box 160, Wellington 6140	
<b>Email:</b>	Cheon.ling@nzqa.govt.nz	

### **Description of Services**

#### **Context**

The Supplier provides environmental certification services to assure entities that their greenhouse gas emissions inventory is complete and accurate, and their management plans to reduce emissions and understand their carbon liabilities in their organisation and more widely through the supply chain to meet the Supplier's certification criteria (**Services**). The Buyer wishes to access the Services and obtain certification under the Supplier's carbonreduce certification programme (**Programme**) as described below:

- The Supplier's carbonreduce certification Programme provides assurance that the Buyer has prepared its greenhouse gas emissions inventory in conformance with ISO 14064-1 (2018),

developed an emissions management plan, set emissions reduction targets and made progress in reducing emissions.

This Contract sets out the terms and conditions on which the Supplier has agreed to provide the Services to the Buyer for the Term specified and the Buyer has agreed to pay the Supplier for the Services.

**Description of Services**

The Buyer is purchasing the Services for the following Membership Level (which becomes the Buyer Membership Level) (tick applicable Buyer Membership Level):

<input type="checkbox"/>	CARBON LITE
<input checked="" type="checkbox"/>	CARBON LITE PLUS
<input type="checkbox"/>	CARBON STANDARD
<input type="checkbox"/>	CARBON STANDARD PLUS
<input type="checkbox"/>	CARBON PREMIUM

The Services are offered to help the Buyer achieve and maintain certification under the Toitū carbonreduce Programme

The Services provided by the Supplier to the Buyer are made up of the following:

- (1) Set Up Services;
- (2) Annual Membership Services; and
- (3) Audit and Certification Services as applicable to the Buyer Membership Level and further detailed in the table below.

<u>Set Up Services</u>	<u>Annual Membership Services</u>	<u>Audit and Certification Services</u>
Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> <li>• Attachments 1 and 3 to Schedule 1</li> </ul>	Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> <li>• Attachments 1,2 and 3 to Schedule 1</li> </ul>	Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> <li>• Attachments 1, 2, 3 and 4 to Schedule 1</li> </ul>
<b>Carbon Lite</b>		
Set Up Services are for the Programme in the first year only. These Services include: <ul style="list-style-type: none"> <li>• Onsite scope assessment</li> </ul>	Annual Membership Services. These Services include: <i>Carbon Measurement and Reduction Services</i> <ul style="list-style-type: none"> <li>• Emanage SaaS Licence for 1 user under the terms set out in</li> </ul>	Audit and Certification Services. These Services include: Verification, Audit and Certification Estimate time: 8-10 hours Verification audit and technical review includes:

<p>and related Services under the Certification Terms set out in Attachment 1 to Schedule 1.</p> <ul style="list-style-type: none"> <li>• Prepare a project plan, brief project team if required.</li> <li>• Discuss and agree the base year and reporting period for your inventory.</li> <li>• Set organisational boundaries, identify emissions sources and set scopes.</li> <li>• Additional software tool training and extra support required for set up and project kick-off.</li> </ul>	<p>Attachment 3 to Schedule 1.</p> <ul style="list-style-type: none"> <li>• Tools and materials in the software including emissions factors.</li> <li>• Guidance materials, templates and other membership only online resources.</li> </ul> <p><i>Account Management Support and Training</i></p> <ul style="list-style-type: none"> <li>• Technical account manager support (8-12 hours);</li> <li>• Introduction to the programme rules and resources;</li> <li>• Tailored project plan for you;</li> <li>• Training and support on environmental measurements and management and reduction opportunities;</li> <li>• Audit preparation.</li> </ul> <p><i>Audit and Certification Services</i> in accordance with the terms set out in Attachment 1 and 2 to Schedule 1.</p> <ul style="list-style-type: none"> <li>• Verification audit of compliance with the programme;</li> <li>• Technical review and certification under the programme.</li> </ul> <p><i>Marketing and Branding</i> in accordance with the terms set out in Attachment 1 and 2 to Schedule 1.</p> <ul style="list-style-type: none"> <li>• Programme Marks Licence under the terms set out in Attachment 2 to Schedule 1.</li> <li>• Training on the use of our Programme Marks.</li> <li>• Newsletters</li> </ul>	<ul style="list-style-type: none"> <li>• Planning, desk review and process agreement</li> <li>• Evaluation of boundaries, data collection, processes and controls;</li> <li>• Evidence collection via interviews, site visit(s), desk-based analysis and data and document reviews;</li> <li>• Evaluation of findings and closure of identified issues;</li> <li>• Preparation of report to include peer review and independent opinion;</li> <li>• Delivers a public disclosure page for external use and confidential internal verification report for management on completion;</li> <li>• Certification issued under the Toitū carbonreduce Programme in accordance with the terms set out in Attachment 1 to Schedule 1.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Best-practice workshops and networking events</li> <li>• Inclusion of your name, logo and level of certification on our website;</li> <li>• Framed certificate of your organisations' Certification.</li> </ul>	
<b>Carbon Lite Plus</b>		
First year only, as above with additional hours as required based on the organisation	As with Carbon Lite, plus: <ul style="list-style-type: none"> <li>• Technical account manager support (16-22 hours)</li> <li>• Total of 2 software users</li> </ul>	Verification, Audit and Certification Estimate: 11-16 hours Services as described above
<b>Carbon Standard</b>		
First year only, as above with additional hours as required based on organisation	As with Carbon Lite, plus: <ul style="list-style-type: none"> <li>• Technical account manager support (16-22 hours)</li> <li>• Total of 2 software users</li> </ul>	Verification, Audit and Certification Estimate: 17-24 hours Services as described above
<b>Carbon Standard Plus</b>		
First year only, as above with additional hours as required based on organisation	As with Carbon Lite, plus: <ul style="list-style-type: none"> <li>• Technical account manager support (22-28 hours)</li> <li>• Total of 3 software users</li> </ul>	Verification, Audit and Certification Estimate: 25-30 hours Services as described above
<b>Carbon Premium</b>		
First year only, as above with additional hours as required based on organisation	Everything in Carbon Lite, plus: <ul style="list-style-type: none"> <li>• Key technical account manager support (28+ hours)</li> <li>• Total of 4 software users</li> <li>• Provision of benchmarking information into your emissions management plan (if available)</li> <li>• A workshop with Marketing to work</li> </ul>	Verification, Audit and Certification Estimate: 32-75 hours Services as described above



	<p>through the brand guidelines in detail and suggest ways in which Your certification can be leveraged and communicated.</p> <ul style="list-style-type: none"> <li>• One selected onsite training session per year (from options list which will be advised to the Buyer by the Supplier)</li> </ul>	
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**Deliverables and Milestones**

**Deliverables and Milestones**

In performing the Services, the Supplier will complete the following key Milestones by the due dates stated below:

Deliverable/Milestone	Performance Standards	Due date
Provision of the following Buyer Membership Level Services: <ul style="list-style-type: none"> <li>• Set Up Services</li> <li>• Annual Membership Services</li> <li>• Programme Marks Licence</li> <li>• Emanage SaaS Licence</li> </ul>	As set out in Attachments 1-4 to Schedule 1 of this Contract	[Within 3 months from start of contract]
Provision of the following Buyer Membership Level Services: <ul style="list-style-type: none"> <li>• Audit and Certification Services.</li> <li>• Verification audit and technical review.</li> <li>• Certification under the Certification Terms.</li> </ul>	As set out in Attachments 1-4 to Schedule 1 of this Contract.	[Within 8 months from start of contract]  Once, ready for audit, auditing period may be divided into an interim and final audit. This will be discussed by with your technical account manager.

Specific code of conduct / policies/ health & safety / protective security / legislative requirement  
 Not applicable

**Supplier’s Reporting Requirements**

Reference Schedule 2 clause 5.2

Report to:	Description of report	Due date
Buyer's Contract Manager	Pre-audit check of information and report back on any issues or inaccuracies	At least six weeks prior to annual audit (interim being conducted by the Supplier)
	Verification and Audit	[6 – 7 months from start of contract]
	Audit Review	[7 – 8 months from start of contract]

## Buyer's Reporting Requirements

Reference Attachment 1 to Schedule 1. You agree that You are aiming to achieve the Certification based on the Verification parameters and assumptions set by You and agreed by Us, which are:

<b>Objective</b>	Toitū carbonreduce Certification in accordance with ISO 14064-1:2018 (organisation inventory).
<b>Scope</b>	All relevant sources as required by the Programme (i.e. All Category 1 and 2 emissions; Category 3 emissions associated with business travel and freight paid for by the organisation; Category 4 emissions associated with waste disposed of by the organisation, and the transmissions and distribution of electricity and natural gas where appropriate; and any Sector specific mandatory emissions sources as outlined by the Programme, within the boundary indicated for the operations of the nominated legal entity inside or outside New Zealand.
<b>Criteria</b>	Technical Requirements (organisation) version 3.0, Certification Mark Guide version 2.0, ISO 14064-3:2019 (Verification).
<b>Consolidation Approach</b>	To be determined.
<b>Materiality</b>	Errors, omissions and exclusions when aggregated do not exceed 5% of the total inventory.
<b>Level of Assurance</b>	Reasonable Assurance for Category 1 and 2. Limited Assurance for Category 3, 4, 5 and 6.
<b>Service Levels</b>	Technical Account Management Support Hours: Up to <b>9</b> hours. Estimated Audit and Certification Hours: Up to <b>14-16</b> hours (subject to the Appendix of Terms).

## Charges

The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees, and where agreed, Expenses and Daily Allowances. The Charges for this Contract are set out below.

### Fees

*Reference Schedule 2 clause 3*

The Supplier's Fees will be calculated as follows:

<b>Services</b>	<b>Cost</b>
Set up fees <ul style="list-style-type: none"> <li>• Introduction to the programme</li> <li>• Tailored remote project kick-off sessions and plan</li> <li>• Training and support on your carbon footprint and management opportunities</li> <li>• Extra remote support to prepare for your first audit</li> </ul>	\$1,410
Buyer Membership Level Services Fees for the following: (Up to 9 hours) <ul style="list-style-type: none"> <li>• Set Up Services</li> <li>• Annual Membership Services</li> <li>• Programme Marks Licence</li> <li>• Emanage SaaS Licence</li> </ul>	\$8,865
Buyer Membership Level Services Fees for the following: (Up to 14-16 hours) <ul style="list-style-type: none"> <li>• Audit and Certification Services</li> <li>• Verification audit and technical review</li> <li>• Certification under the Certification Terms.</li> </ul>	\$3,353 - \$3,823
Such other Fees as set out in any Attachment to this Contract or agreed in writing between the parties.	As per Attachment or agreed in writing

The Fees as detailed in the Contract will be fixed for the first twelve months and thereafter subject to variation by agreement of the parties at no more than twelve-monthly intervals.

Each request by a party for a variation in the Fees will be in writing and will be supported by documentary evidence to justify and permit verification of the variation claimed.

The Fees are the total amounts payable in connection with the Services provided to the Buyer by the Supplier under this Contract (including account management, supply of Services to the Buyer, all licences required by the Buyer to use and benefit from the Services, attending meetings, quotations, surveys, invoices and reporting to the Buyer). No management Fee or any other additional amount may be charged to the Buyer without written confirmation from a relevant Authorised Representative of the Buyer.

Where the Buyer requests additional services (which may include Auditor or other Subcontractor services) from the Supplier, this will be charged at the current hourly rate as agreed between the parties.

## Expenses

*Reference Schedule 2 clause 3*

### Actual and reasonable — general Expenses

The Buyer will pay the Supplier's actual and reasonable Expenses incurred in delivering the Services on a case by case basis provided that:

- a. the Buyer has given prior written consent to the Supplier incurring the Expense
- b. the Expense is charged at actual and reasonable cost:

- c. If the Expense is for a meal, the Expense does not include alcohol or mini-bar items and is no greater than:
  - \$87 excluding GST over a 24 hour period for a traveller who is travelling in an area that is different to where they normally work;
  - \$44 excluding GST where no overnight stay is required, and travel is greater than 12 hours;
  - \$18 excluding GST where no overnight stay is required, and travel is less than 12 hours.
- d. If the Expense is for accommodation in New Zealand, the Expense is not greater than \$161 excluding GST per night per traveller.
- e. If the Expense is for air travel, the air travel is booked through a Travel Management Company on the All-of-Government panel.
- f. The claim for Expenses is supported by GST receipts.

## Daily Allowance

Reference Schedule 2 clause 3

**No Daily Allowances are payable.**

## Invoices

Reference Schedule 2 Subject to clauses 3 and 11.7

The Supplier must send the Buyer an invoice for the Charges at the following times:

**On the following dates subject to completion of the relevant Deliverables/Milestones.**

Deliverable/Milestone	Due date	Amount due (exc GST)
Set up Fees <ul style="list-style-type: none"> <li>• Introduction to the programme</li> <li>• Tailored remote project kick-off sessions and plan</li> <li>• Training and support on your carbon footprint and management opportunities</li> <li>• Extra remote support to prepare for your first audit</li> </ul>	Payable in accordance with Schedule 2 clause 3.3.	\$1,410
Provision of the following Buyer Membership Level Services: (Up to 9 Hours) <ul style="list-style-type: none"> <li>• Set Up Services</li> <li>• Annual Membership Services</li> <li>• Programme Marks Licence</li> <li>• Emanage SaaS Licence</li> </ul>	Payable in accordance with Schedule 2 clause 3.3.	\$8,865
Buyer Membership Level Services for the following: (Up to 14-16 Hours) <ul style="list-style-type: none"> <li>• Audit and Certification Services</li> <li>• Verification audit and technical review</li> <li>• Certification under the Certification Terms</li> </ul>	Payable in accordance with Schedule 2 clause 3.3	\$3,353 - \$3,823
<b>Total (excluding GST)</b>		<b>\$13,628 - \$14,098</b>

**Address for invoices***Reference Schedule 2 clause 3*

	<b>Buyer's address</b>
For the attention of:	Cheon Ling
Email:	accountspayable@nzqa.govt.nz
Address:	L13, 125 The Terrace, WELLINGTON
PO Number or Cost Centre (if required)	

**Insurance***Reference Schedule 2 Clause 8.1*

**The Buyer does not require any specific insurance under this Contract other than the requirements under clause 8.1 of Schedule 2.**

**Changes to Schedule 2 and attachments**

**Schedule 2 of this Contract is amended as follows:**

*Existing clause 1.2 is deleted and a new clause 1.2 is inserted as follows:*

"1.2 This Contract will continue in force until terminated in accordance with replacement clause 1.3 or clause 11 of Schedule 2.

*Existing clause 1.3 is deleted and a new Clause 1.3 is inserted as follows:*

"1.3 The Supplier will review the Buyer's emissions footprint and membership level on an annual basis as both may change over time. Where the Supplier wishes to make a fee adjustment it will advise the Buyer of this not less than 40 Business Days prior to the anniversary of the Start Date (each anniversary of the Start Date will be the fee adjustment Date). If the Buyer does not agree to accept the fee adjustment, the Buyer may terminate this Contract by giving the Supplier at least 20 Business Days written notice."

*Clause 2.3(d) is deleted and replaced with the following clause:*

d. comply with any relevant codes of conduct listed in Schedule 1 including (if applicable) the Supplier Code of Conduct issued by the Procurement Functional Leader – see [Supplier Code of Conduct | New Zealand Government Procurement and Property](#)

*The following sentence is added at the end of Clause 6.3:*

- "The Buyer may not transfer any of its rights or obligations or its Certification under this Contract."

*Clause 10 is subject to the relevant Dispute Resolution provisions set out in Attachments 1-4 of Schedule 1.*

*Clauses 12.1 and 12.2 are deleted and replaced with the specific Intellectual Property Rights provisions under each Attachment (as applicable) to Schedule 1.*

*Clause 13.1.c is replaced with the following:*

c. if the use or disclosure is required or anticipated by the Government Procurement Rules [[Government Procurement Rules | New Zealand Government Procurement and Property](#)], or

required by law (including under the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987), Ministers or parliamentary convention or any other regulation, rules or policy that is binding on that Party;

*Clause 17.1 is amended to include the following words (underlined):*

“Any change to this Contract is called a Variation. Except as set out in an Attachment, a Variation must be agreed...”

*Clauses 17.5 is amended to include the following words (underlined):*

“**Publication:** Subject to clause 6.2 in Attachment 1 to Schedule 1, the Supplier must...”

*The Definitions section is amended as follows:*

The following Definitions are deleted and replaced with the definitions below:

- **Confidential Information** is information, including data and personal information, that:
  - a. is by its nature confidential
  - b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
  - c. is provided by either Party or a third party 'in confidence'
  - d. either Party knows or ought to know is confidential, or
  - e. is of a sensitive nature or commercially sensitive to either Party; and includes, in the case of the Supplier, the Supplier's Pre-existing Intellectual Property Rights.
- **Pre-existing Intellectual Property Rights** Any:
  - a. Intellectual Property Rights of a party which:
    - i. exist at the date of this Contract; or
    - ii. are not developed under this Contract; and
  - b. modifications or enhancements to the items in paragraph a. of this definition that cannot be used independently of those items.

*The following Definitions are deleted:*

- **New Intellectual Property Rights**

*The following Definitions are added as new Definitions:*

- **Carbon Credit** means a tradeable unit representing the avoidance, reduction or removal of one tonne of carbon dioxide equivalent greenhouse gas emissions.
- **Certification** means the Supplier's certification of the Buyer under and in accordance with the Toitū carbonreduce and/or Toitū carbonzero Programme (or any level of certification within the Programme if applicable).
- **Certification Period** means the period of time stated on the Certification for which the Certification is valid as long as the provisions set out in this Contract are met.
- **Offsetting and Offsetting Services** means the act of cancelling Carbon Credits in order to balance or compensate for an equivalent volume of greenhouse gas emissions measured as carbon dioxide equivalents.
- **Programme Marks** means the word marks and logo marks licensed to the Buyer and used by the Buyer under the terms of Appendix 1 to Attachment 2 of Schedule 1 as evidence that the Buyer's organisation, product, service or event (as applicable) meets the Programme requirements as set out in the Technical Requirements, these additional terms and the Programme Mark Guide.
- **Territory** means New Zealand.

## Attachments

Reference 'Parts of this Contract' described at Page 1

### Attachment 1 to Schedule 1

#### Certification Terms

##### Introduction

- A. The terms set out in this Attachment 1 to Schedule 1 (**Attachment 1**) outline the terms that apply to the Supplier's provision of the Services to the Buyer and will prevail in the event of any conflict or inconsistency with Schedule 2.

It is agreed

#### 1. Audit and Certification Fees

- 1.1. After the Buyer executes and returns this Contract the Supplier or the Auditor may carry out a scope assessment of the Services. The Buyer agrees that if, as a result of the scope assessment, the Supplier needs to increase or decrease the estimate of the time it will take to perform the Audit, the Supplier will notify the Buyer of the adjusted Audit and Certification Fees. If the Buyer does not agree to accept the adjusted Audit and Certification Fees the Buyer may terminate the Contract by giving the Supplier at least 20 Business Days written notice and paying any Audit costs the Supplier has incurred up to the date the Buyer's notice is received.
- 1.2. If during the Audit it becomes necessary to increase or decrease the time spent on the Buyer's Audit, the Supplier will notify the Buyer in writing of the revised estimate of the time it will take to perform the Audit and the adjusted Audit and Certification Fees. If the Buyer does not agree to accept the adjusted Audit and Certification Fees the Buyer may terminate the Contract by giving the Supplier at least 20 Business Days written notice and paying any Audit costs the Supplier has incurred up to the date the Buyer's notice is received.
- 1.3. If there is an adjustment to the Audit and Certification Fees under Clause 1.1 or 1.2, such adjusted Audit and Certification Fees will become the new Audit and Certification Fees for the Services provided under this Contract. If the Buyer does not agree to accept the adjusted Audit and Certification Fees, the Buyer may terminate the Contract in accordance with clause 11.2 of Schedule 2. The payment terms in clause 3.3 of Schedule 2 will apply.
- 1.4. The Buyer may request that the Supplier engages an external Auditor as a Subcontractor to carry out the Buyer's Audit, in which case the Buyer and Supplier must agree on the following before the external Auditor is engaged by the Supplier:
  - a. the terms under which the Supplier will contract the Auditor;
  - b. the fees and disbursements of the Auditor that will be payable by the Buyer in addition to the Supplier's Certification Fee.

#### 2. Intellectual Property

- 2.1. The Buyer acknowledges and agrees that it will not receive or acquire any intellectual property rights relating to the Services and/or the Programme other than a licence to use the Programme Marks in the manner expressly provided for in this Contract and in the Programme Marks Licence Terms at Attachment 2 to Schedule 1.
- 2.2. The Buyer will own all data that relates solely to the Buyer and which the Supplier has obtained in connection with the Programme ("Programme Data"). Subject to clause 2.4, the Supplier may use the Programme Data in order to provide the Services to the Buyer.
- 2.3. The Supplier provides the Buyer with a royalty-free, non-transferrable right to use the Supplier's Intellectual Property as reasonably required in order for the Buyer to execute the

Toitū carbonreduce programme. Any rights to the Programme Marks will be used in accordance with Attachment 2 to Schedule 1.

- 2.4. The Supplier will have the right to use, manipulate and publish in any form anonymised and/or aggregated data and products created from the Programme Data for any reasonable purpose.

### 3. Certification

- 3.1. In order for the Buyer to participate in the Programme and for the Supplier to carry out the Buyer's Certification, the Supplier will provide the Buyer with a copy of the Documentation in either hard copy or electronic form (via the Supplier's website on password-protected pages) and a licence to use the Supplier's Emanage SaaS offering in accordance with the Emanage SaaS Licence Terms set out at Attachment 3 to Schedule 1 of this Contract.
- 3.2. The Supplier will treat the Buyer fairly and without discrimination throughout the provision of the Services.
- 3.3. The Supplier will award the Buyer Certification (at the level the Buyer has achieved if applicable) if the Buyer meets the Technical Requirements and has paid the applicable Fees set out in Schedule 1 to this Contract. The Supplier may, at its sole discretion, refuse to award the Buyer Certification where:
- The Supplier believes it has evidence of the Buyer's current or recent non-compliance with the international standards and/or regulations relevant to the Programme; and/or
  - The Supplier, acting reasonably, believes that awarding Certification poses an unacceptable threat to its impartiality, or may damage its reputation and/or the credibility of the Programme.
- 3.4. Upon Certification, the Supplier will grant the Buyer a licence to use the Programme Marks in accordance with the Programme Marks Licence Terms set out at Attachment 2 to Schedule 1 of this Contract.
- 3.5. The Buyer must not:
- make any representation relating to the Programme or the Buyer's Certification, except to the extent permitted by this Contract and the terms on which Certification was granted to the Buyer;
  - make any representation relating to the Programme or the Buyer's Certification, that may deceive or mislead any person as to the nature and/or scope of the Buyer's Certification and / or status of the Buyer's membership with the Programme;
  - do or omit to do anything which may bring the Programme into disrepute, or otherwise damage the credibility of the Programme; or
  - purport to transfer the Certification.

### 4. Audit and Verification (if Applicable)

- 4.1. Audits are conducted when requested by the Buyer (when the Buyer considers it will meet the requirements of the Programme), and if not requested by the Buyer, annually within 12 months of the date of the previous on-site Audit, unless otherwise specified by the Supplier.
- 4.2. Prior to the Audit the Supplier will send the Buyer a pre-audit engagement letter and the Buyer must agree to comply with any requirements specified in that letter as they may supersede and will take precedence over the terms of Schedule 1. The pre-audit engagement letter will be deemed to be incorporated by reference in these Certification Terms.
- 4.3. The Supplier will advise the Buyer of the names of the Auditors selected to conduct the Audit. The Buyer may object to an individual Auditor or Auditors only on the grounds that they are in a position of conflict due to an activity or relationship which compromises or may compromise their impartiality in conducting the Audit (or any other reasonable grounds agreed to by the Supplier in writing in advance of the Audit).
- 4.4. The date for conducting the Audit will be arranged in consultation with the Buyer. If the Buyer postpones or cancels the Audit after it has agreed the date with the Supplier, the Buyer will



pay the Supplier any unrecoverable disbursement costs. Notwithstanding the provisions under Schedule 2, if the Buyer cancels the Audit less than 20 Days before the agreed date, the Buyer will also pay the Supplier a cancellation fee of 50% of the Certification Fee.

4.5. The Buyer will:

- a. provide the Auditors with access (during the Buyer's normal business hours) to the Buyer's records, premises and staff in order to conduct the Audit;
- b. provide the Auditors with such information and data as reasonably required by the Auditors to conduct the Audit. If the Buyer has not submitted the required information and data at least 20 Days prior to the agreed date for Audit, an additional Audit may be required and the Buyer will pay the Supplier for additional time and disbursement costs;
- c. comply with the Supplier's reasonable requests in relation to the Audit in a timely manner and not obstruct the Audit in any way; and
- d. allow observers from any Accreditation Body, as well as trainers and trainee Auditors, to observe the Audit. You will be notified in advance if this is required and upon request the Supplier can provide the Buyer with a copy of any confidentiality obligations such observers have provided to the Supplier prior to commencing any such observation.

4.6. The Buyer will take all reasonable steps to ensure that the health and safety of the Auditors, the Supplier's staff, technical experts and observers is not compromised while on the Buyer's premises. If any of the Supplier's Personnel identifies a risk to health and safety while on the Buyer's premises, The Supplier will notify the Buyer of this and may suspend the Audit until such risk has been removed to the Supplier's reasonable satisfaction.

4.7. If the Audit is stopped at the Auditor's discretion (acting reasonably), the Buyer will pay the Supplier for the work completed up to the point where the Audit stopped.

4.8. In the event that the Audit report includes one or more non-conformances, the Buyer must rectify such non-conformance(s) to the satisfaction of the Auditor within the number of Days specified in the non-conformance log issued by the Auditor (which must give the Buyer a reasonable opportunity to correct the non-conformance). If the close-out of non-conformances exceeds this period, the Buyer will pay the Supplier additional fees (which may include the Supplier's fees for another Audit to be performed at the Supplier's discretion where due to the passage of time the Supplier can no longer rely on the previous Audit) which the Supplier will charge to the Buyer on a time and disbursements basis. For the purposes of this Clause 4.8, "close out" means either:

- a. where the Non-conformance is an error, the correction of that error to the Supplier's reasonable satisfaction; or
- b. where the Audit findings require certain actions to be implemented by the Buyer, receipt by the Supplier of sufficient evidence to show that such actions have been implemented.

4.9. The Buyer warrants that all information and data provided by it for the purposes of the Audit and any additional Audits (whether under Clause 4.5(b), 4.8 or otherwise) are accurate, complete, up to date and not misleading.

**5. Offsetting Services (if Applicable)**

5.1. Where the Buyer requires Offsetting Services for its Certification, the provisions of the Toitū Offsetting Service Terms, which the Supplier will provide to the Buyer, will apply.

**6. Public Statements**

6.1. During the Certification Period, the Buyer may publicise its Certification, and use any Programme promotional material provided by the Supplier for publicity and advertising purposes, in accordance with the Supplier's reasonable directions.

6.2. Unless otherwise agreed with the Buyer in writing, the Supplier's JAS-ANZ accreditation requires the Supplier to publicise the Buyer's Certification and/or Programme status once initial Certification is achieved. The Supplier may also make a statement on the 'Suspended or

Withdrawal' section of its website for a period of three months regarding the Buyer's Certification in the following circumstances:

- (a) if the Buyer does not take all steps necessary to complete re-Certification, the Supplier may publish the Buyer's name on the Website stating that the Buyer's Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact;
- (b) if the Buyer's Certification has been suspended or withdrawn, the Supplier may publish the Buyer's name on the Website stating that the Buyer's Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact; or
- (c) if there is any confusion relating to the Buyer's Certification, the Supplier may issue a statement clarifying the matter and inform the relevant Accreditation Body of such fact.

6.3. The Supplier will maintain a register of all current Licensees and will make the register available for public inspection.

## **7. Complaints and Appeals**

- 7.1. If the Supplier receives any complaints from third parties about the Buyer in relation to the Buyer's Certification, the Supplier will notify the Buyer of this and investigate the complaint. The Supplier will provide a copy of the investigation report to the Buyer and the complainant. If as a result of the investigation the Supplier, acting reasonably, considers that the Buyer's Certification is no longer valid, the Supplier may (at its sole discretion and without liability to the Buyer) either suspend or withdraw the Buyer's Certification.
- 7.2. If the investigation determines that the Buyer's Certification is not valid due to the Supplier's error or default and the Buyer's Certification is suspended or withdrawn, the Supplier will refund to the Buyer that proportion of Fees paid in advance for the period between the date of suspension or withdrawal and the anniversary of the Start Date.

## **8. Modification, Suspension or Discontinuance of Programme**

- 8.1. Notwithstanding any of the Supplier's other rights and subject to clause 11.1, the Supplier reserves the right at any time, and from time-to-time, to modify or discontinue (either temporarily or permanently) the Programme or any part of it (with at least 20 Business Days written notice). The Supplier agrees that it will not be in breach of the Contract or liable to the Buyer or any third party for any modification, suspension or discontinuance of the Programme.
- 8.2. Where the Programme is modified in a manner that the Buyer, acting reasonably, considers materially changes the nature of the benefits to be received by it, then the Buyer may withdraw from the Programme and terminate this Contract by giving the Supplier at least 20 Business Days written notice. The Buyer will be liable to pay the Supplier only for Services provided or expenses incurred up until the date termination takes effect.

## **9. Change of Circumstance, Withdrawal and Suspension**

- 9.1. The Buyer must advise the Supplier as soon as practicable of any circumstances which may affect its ability to meet the Technical Requirements and other standards and specifications as listed in this Contract. Notwithstanding the Supplier's other rights, the Supplier may (at its option) either suspend or withdraw the Buyer's Certification if the Supplier considers that the Certification is no longer valid due to a change in the Buyer's circumstances.
- 9.2. Following Certification, notwithstanding the Supplier's other rights, where the Supplier has reason to believe that the Buyer's circumstances have changed but the Buyer has not notified the Supplier, the Supplier may conduct additional Audits at any time to determine whether the Buyer continues to meet the Technical Requirements. If an additional Audit identifies that the Buyer no longer meet the Technical Requirements, the Supplier will give the Buyer notice of its findings and the Buyer will have 20 Business Days from the date of such notice to remedy the non-conformance and the Buyer will reimburse the Supplier for the reasonable

cost of the additional Audit. If the Buyer does not remedy the non-conformance to the Supplier's satisfaction within the 20 Business Day period, the Supplier may (at its option) either suspend or withdraw the Buyer's Certification.

- 9.3. If the Supplier exercises its right to suspend the Buyer's Certification under Clause 9.1 or 9.2 of these Certification Terms, then:
- a. during the suspension (which will be for a period of not more than 6 months), the Supplier and the Buyer will meet and, in good faith, try to resolve the issue; and
  - b. if the Buyer's Certification has been suspended for 6 months, then at such time the Supplier will (at its option) either re-instate or withdraw the Buyer's Certification.
- 9.4. Where an Audit date has been agreed prior to any written notice of termination of this Contract by the Buyer, Clause 4.4 of these Certification Terms applies.

## 10. Consequences of Expiry, Withdrawal, Suspension and Termination

- 10.1. If the Supplier suspends the Buyer's Certification for any reason, then (until the suspension has been lifted at the Supplier's sole discretion) the Buyer must cease all use of the Programme Marks and cease all other representations to the effect that the Buyer has Certification, and the Buyer must not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Programme Marks or make any representation that the Buyer has Certification.
- 10.2. In addition to the rights set out in Clause 11 of Schedule 2 of this Contract, if the Buyer withdraws from the Programme, or the Supplier withdraws the Buyer's Certification for any reason, or the Buyer's Certification has expired, then this Contract will automatically terminate.
- 10.3. In addition to the provisions of Clause 11 of Schedule 2, upon expiry or termination of this Contract for any reason, the Buyer must:
- a. immediately cease all use of the Programme Marks and cease all other representations to the effect that the Buyer has Certification;
  - b. immediately pay to the Supplier all amounts owing under this Contract; and
  - c. not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Programme Marks or make any representation that the Buyer has Certification.
- 10.4. Notwithstanding Clause 10.1 and Clause 10.2 of these Certification Terms, the Buyer is not required to withdraw from sale or circulation any products, services, promotional material or other matter bearing any of the Programme Marks or otherwise referring to the Buyer's Certification which have been placed into the market prior to the suspension or withdrawal of the Buyer's Certification or the termination of this Contract (as the case may be).

## 11. Refund of Fees

- 11.1. Where the Programme is discontinued under Clause 8.1 of these Certification Terms, the Buyer's obligation to pay any Fees not then owing will cease and the Supplier will refund to the Buyer such proportion of the Fees that the Buyer has paid that relate to a period that has not expired at the date the Programme is so modified, suspended or discontinued.
- 11.2. Subject to Clause 11.1, if the Buyer is not awarded Certification, or the Buyer withdraws from the Programme, or the Buyer's Certification is suspended or terminated, the Buyer will pay all outstanding monies owing under this Contract (including any amounts owing under Clause 4.4 of these Certification Terms) and the Supplier will not refund the Buyer any amounts paid under this Contract.

## 12. Definitions and Interpretation

- 12.1. In this Contract, unless the context requires otherwise:
- a. **Accreditation Body** means an international accreditation agency or body that the Supplier uses in relation to the Programme

- b. **Annual Membership Fee** means the Buyer's annual membership fee for becoming a member of the Programme based on the Buyer's organisational environmental profile and service requirements as advised to the Supplier by the Buyer and as set out in the Attachments to this Contract or as otherwise advised to the Buyer in writing from time to time.
- c. **Audit** means the assessment undertaken by the Supplier or an Auditor to confirm that the Buyer complies with the Technical Requirements. This process may include verification of data and information.
- d. **Auditor** means an internal or external Auditor that the Supplier may appoint to assess the Buyer's compliance with the Technical Requirements of the Programme.
- e. **Audit and Certification Fees** means the fees the Supplier calculates using its hourly rate and reflecting the time it estimates it will take to complete the Buyer's Audit, any technical review and the Buyer's Certification, which estimate may be varied by the scope assessment (if any) and completion of the actual Audit as further outlined in Clause 1.
- f. **Certification** means the Supplier's certification of the Buyer under and in accordance with the Programme (or any level of Certification within the Programme if applicable).
- g. **Documentation** means any documents related to the Buyer's participation in the Programme, notes, templates, registers, checklists and any other documents the Supplier may issue to the Buyer whether in hard or electronic copy in relation to the Programme. For the avoidance of doubt, Intellectual Property Rights include Documentation.
- h. **Level** means a level, step or stage of Certification in the Programme, where applicable to the Programme.
- i. **Licensee** means a person that has been granted Certification under a Certification Programme operated by the Supplier.
- j. **Programme** means the certification programme specified in Schedule 1.
- k. **Programme Mark Guide** means the Programme mark use guide issued by the Supplier, as amended by the Supplier from time to time.
- l. **Technical Requirements** means a document issued by the Supplier which contains the technical requirements or rules for Certification, as amended by the Supplier from time to time. A copy is available on request.

## Attachment 2 to Schedule 1

### Programme Marks Licence Terms

#### Introduction

- B. The Supplier owns the Programme Marks.
- C. The Supplier has agreed to license the Programme Marks to the Buyer on the terms and conditions contained in this Attachment 2 to Schedule 1 (**Attachment 2**), which will prevail in the event of any conflict or inconsistency with Schedule 2.

It is agreed

#### 13. Definitions and interpretation

13.1. **Definitions:** In this Attachment, unless the context otherwise requires:

**Authorised Purpose** means the right to use the Programme Marks for:

- a. promotion of the Buyer's compliance with the Supplier's greenhouse gas emissions reduction programme and the Programme Mark Guide; and
- b. any other purpose agreed in writing between the parties from time to time;

#### 14. Licence of Programme Marks

14.1. **Term:** This Attachment 2 will commence on the date of Certification of the Buyer under the Certification Terms and will remain in force for the Term, unless and until the Contract is terminated.

14.2. **Licence:** In accordance with the terms and conditions of this Attachment 2 and in consideration for payment of the Fees under Schedule 1 of this Contract, the Supplier grants to Buyer a non-transferable (except as expressly provided in this Schedule) right to use the Programme Marks in accordance with the Authorised Purpose throughout the Territory for the Term.

#### 15. Use of Programme Marks

15.1. The Buyer will:

- a. use the Programme Marks in accordance with the Programme Mark Guide, this Attachment 2 to Schedule 1 and the Contract;
- b. not use the Programme Marks unless the Buyer has a current Certification under the Programme or (where expressly permitted in writing by the Supplier) is working towards Certification and has paid all applicable Fees;
- c. not sublicense the Programme Marks or otherwise allow any third party (including, without limitation, a retailer or a distributor) to use the Programme Marks without the Supplier's prior written approval (which will not unreasonably be withheld but may be subject to conditions);
- d. if the Buyer is uncertain about correct use of the Programme Marks, the Buyer will provide the Supplier with drafts of any material the Buyer intends to publicly release that use any of the Programme Marks and/or contain any references in relation to the Certification and/or the Programme, and (where reasonable and practicable) obtain the Supplier's written approval to such use prior to release of the material;
- e. maintain accurate and up to date records of all the Buyer's use of the Programme Marks and, if requested by the Supplier on reasonable notice, permit an independent Auditor to inspect such records (at the Supplier's cost) during the Buyer's normal business hours to assess use of the Programme Marks;
- f. during any Audit other than the first Audit, provide to the Auditor on request examples of the Buyer's use of the Programme Marks;
- g. not alter any of the Programme Marks in any way, except with the Supplier's prior written approval; and

- h. comply with all the Supplier's reasonable directions in relation to the Buyer's use of the Programme Marks.

15.2. The Buyer is responsible for ensuring that the Buyer's use of the Programme Marks is not likely to mislead or deceive. The Supplier will not be liable to the Buyer or any third party for a claim that the Buyer's use of the Programme Marks is misleading or deceptive.

15.3. The Buyer must only use the Programme Marks (and not any other mark or design) in relation to the Buyer's Certification or as otherwise agreed by the Supplier, the Buyer may not create or use its own or another trade mark in association with the Buyer's Certification or in combination with the Programme Mark.

15.4. If the Buyer wishes to continue to use the Programme Marks after the Certification Period the Buyer must apply for and obtain recertification in accordance with the Certification Terms.

## 16. Intellectual Property Rights

16.1. **Ownership:** The Buyer acknowledges that all Intellectual Property Rights in the Programme Marks belong to the Supplier. The Buyer will not contest or dispute such ownership.

16.2. **Updates:** The Supplier will make any new versions of the Programme Marks available to the Buyer.

16.3. **Undertakings:** The Buyer undertakes that it will:

- a. not reproduce, adapt, vary or modify the Programme Marks, except as expressly permitted by this Attachment 2 to Schedule 1;
- b. not use the Programme Mark for any other Purpose than that set out in Schedule 1 and this Attachment 2 ; and
- c. not transfer, assign or otherwise deal in or grant a security interest in the Programme Marks or the Buyer's rights under this Attachment 2, except as expressly permitted by this Attachment 2.

## 17. Warranties

17.1. **No infringement:** The Supplier warrants that to the best of its knowledge the Programme Marks do not infringe the Intellectual Property Rights of any third party.

17.2. **Exclusions:** Except as expressly provided in this Attachment 2, all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded, including without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose.

**APPENDIX 1 –PROGRAMME MARK**

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RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

## Attachment 3 to Schedule 1

### Emanage SaaS Licence Terms

#### Background

- A. The Supplier has developed certain software applications and platforms which it makes available via the internet for the purpose of recording, calculating, managing and reporting greenhouse gas emissions and other requirements of the Supplier's Certification Programme.
- B. The Buyer wishes to use the Supplier's Certification Programme in its business operations.
- C. The Supplier has agreed to provide, and the Buyer has agreed to take and pay for (the fee for which is incorporated into the Supplier's Fees), the Supplier's Software Services subject to the terms and conditions of the Contract and this Attachment 3 to Schedule 1 (**Attachment 3**).

#### 18. Definitions and interpretation

18.1. The terms of this Attachment 3 will prevail in the event of any conflict or inconsistency with Schedule 2.

18.2. In this Attachment 3, unless the context otherwise requires or it is specified otherwise:

**Authorised Users** means:

- a. the Related Users;
- b. the Buyer's employees, agents, and independent contractors; and
- c. in respect of the Related Users, that Related Users' employees, agents, independent contractors who are authorised by the Related User to use the Subscription Services and the Documentation;

**Appendix** means the appendices to this Attachment 3;

**Buyer Data** means the data inputted by a Buyer, Authorised User, or Related User on a Buyer's behalf for the purpose of using the Subscription Services or facilitating a Buyer's use of the Subscription Services;

**Documentation** means the documentation (if any) made available by the Supplier under this Attachment 3 (whether in hardcopy or electronic form), which sets out a description of the Subscription Services and the user instructions for the Subscription Services;

**Implementation Services** means those services necessary for implementation as advised by the Supplier from time to time;

**Membership Level** means the Buyer Membership Level for the Programme as set out in Schedule 1 of this Contract;

**Normal Business Hours** means 8.30 am to 5.00 pm local New Zealand Standard Time, each Business Day;

**Related Users** means the entities specified in Part 4 of Appendix 1, based on the Buyer's Membership Level, if any;

**Renewal Period** means the renewal period, as set out in Part 3 of Appendix 1;

**Service Levels** means:

- a. in respect of the Subscription Services, the service levels set out in Part 5 of Appendix 1; and



- b. in respect of the Support Services, the service levels set out in Part 3 of Appendix 2;

**SaaS Services** means the Subscription Services, Support Services, Implementation Services and any additional services agreed between the Supplier and the Buyer;

**Software means** the online software applications provided by the Supplier, as set out in Part 1 of Appendix 1;

**Subscription Services** means the subscription services provided by the Supplier to the Buyer under this Attachment 3 that allows Authorised Users access to the Software via [www.toitu.co.nz](http://www.toitu.co.nz) or any other website notified by the Supplier from time to time, as may be more particularly described in the Documentation;

**Subscription Term** means the Initial Subscription Term together with any subsequent Renewal Periods;

**Support Services** means the support services that the Supplier will provide in relation to the Subscription Services, as set out in Appendix 2;

**Virus** means any thing or device (including any software, malware, code, file or program) which may:

- a. prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- b. prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or
- c. adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. Licence

2.1. The Supplier grants to the Buyer a non-exclusive, non-transferable right to:

- a. access and use the Subscription Services and the relevant Documentation; and
- b. permit the Authorised Users to access and use the Subscription Services and the Documentation, during the Subscription Term solely for the internal business operations of the Buyer, all on the terms and conditions set out in this Contract. Use by the Buyer and each Authorised User of the Subscription Services and the Documentation is strictly limited to the Territory.

2.2. The Buyer will:

- a. ensure that only the Authorised Users access and use the Subscription Services and the Documentation;
- b. keep a secure password for its access and use of the Subscription Services and Documentation and keep this password confidential, and procure that each Authorised User does the same;

- c. permit the Supplier, by giving at least 72 hours' prior notice, to audit the Subscription Services in order to establish whether the Subscription Services are being used in accordance with this Attachment 3;
- d. promptly disable any login account if the Supplier discovers (through undertaking the audits referred to in clause 2.2(c)) that any login details have been provided to any person who is not an Authorised User; and
- e. on demand, pay to the Supplier an amount of any underpayment of Fees discovered by the Supplier through undertaking the audits referred to in clause 2.2(c).

2.3. The Buyer will not access, store, distribute or transmit any Viruses, and the Supplier may, without liability to the Buyer, disable the Buyer's access to the Subscription Services if the Buyer is in breach of this clause.

2.4. The Buyer will not:

- a. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Attachment 3:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- b. access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;
- c. use the Subscription Services and/or Documentation to provide services to third parties except to the extent the provision of such services can reasonably be contemplated through the use of the Subscription Services; or
- d. make the Subscription Services and/or Documentation available to any third party except the Authorised Users.

2.5. The Buyer will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

### 3. SaaS Services

- 3.1. The Supplier will, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Buyer on and subject to the terms of this Contract.
- 3.2. The Supplier will use commercially reasonable endeavours to provide the Subscription Services in accordance with the Service Levels.
- 3.3. The Supplier will, as part of the Subscription Services and at no additional cost to the Buyer, provide the Implementation Services (if any) as advised by the Supplier from time to time. So that the Supplier can provide the Implementation Services, the Buyer will co-operate with the Supplier and provide the Supplier with all relevant information reasonably requested by the Supplier. All expenses properly incurred by the Supplier in connection with the Implementation Services will be reimbursed as an additional charge.

- 3.4. Where the Buyer requires any additional services, it will notify the Supplier and the Supplier will provide those services on a subscription or time and material basis at its then-current standard hourly rates.
- 3.5. The Supplier will, as part of the Subscription Services and at no additional cost to the Buyer, provide the Buyer with Support Services during Normal Business Hours. The Supplier may change the Support Services in its sole and absolute discretion from time to time. If the Buyer does not agree to accept the changes to the Support Services, the Buyer may terminate the Contract in accordance with clause 11.2 of Schedule 2.
- 3.6. The Buyer acknowledges that the Supplier regularly upgrades and updates the Subscription Services and that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require the Buyer to schedule and implement the changes. The Buyer will, where required, upgrade its software and/or equipment in order to make efficient use of the Subscription Services. The Supplier will provide the Buyer with reasonable notice of any such changes.

#### 4. Buyer Data

- 4.1. The Buyer will own all rights, title and interest in and to all of its Buyer Data and, as between the parties, the Buyer will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data.
  - 4.2. Each party will take appropriate technical, physical and organisational measures and safeguards against unauthorised or unlawful processing of the Buyer Data or its accidental loss, destruction or damage and the Supplier will, as part of these measures, use reasonable endeavours to back-up Buyer Data. The Buyer acknowledges that if there is any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy will be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier. The Supplier will not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party.
  - 4.3. The Buyer acknowledges and agrees that the Supplier may retain and use the Buyer Data for the purpose of:
    - a. during the Subscription Term:
      - (i) performing the Supplier's obligations under the Contract;
      - (ii) ensuring that the Buyer is complying with the terms and conditions of the Contract;
      - (iii) improving or enhancing the Subscription Services;
      - (iv) assessing the performance of the Buyer's business, including comparing or benchmarking such performance against the performance of the Supplier's other Buyers' businesses or industry practice;
      - (v) assessing what other services the Supplier may provide and promote to the Buyer, including offering services that may assist in improving environmental performance;
    - b. following the expiry or termination of the Contract:
      - (i) performing data analysis on an aggregated and anonymous basis, and manipulating, publishing and/or exploiting that aggregated and anonymised data (whether on a commercial basis or otherwise) in any form and for any purpose; and
      - (ii) complying with applicable laws, regulatory requirements, codes or practice or guidance issued by regulatory authorities,
- provided that the Supplier complies with its confidentiality obligations under Schedule 2 of this Contract.

#### 5. Buyer's Obligations

5.1. The Buyer will:

- a. provide the Supplier with all necessary co-operation in relation to this Attachment 3, and all necessary access to such information as may be required by the Supplier, so that the Supplier can provide the SaaS Services including but not limited to Buyer Data, security access information and configuration services;
- b. comply with all applicable laws and regulations with respect to its activities under this Attachment 3;
- c. carry out all other Buyer responsibilities set out in this Attachment 3 in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- d. ensure that it, and the Authorised Users, use the Subscription Services and the Documentation in accordance with the terms and conditions of this Attachment 3 and will be responsible for any Authorised User's breach of this Attachment 3;
- e. ensure that its network and systems comply with the relevant specifications as may be specified by the Supplier from time to time; and
- f. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.

**6. Intellectual Property Rights**

- 6.1. The Buyer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights:
  - a. in, or created during the performance of, the SaaS Services; and
  - b. in the Documentation, together with all modification, enhancements and other developments to the SaaS Services and Documentation (whether or not recommended or suggested by the Buyer).
- 6.2. Except as expressly stated in this Attachment 3, this Attachment 3 does not grant the Buyer any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the SaaS Services or the Documentation.
- 6.3. The Supplier confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Attachment 3.
- 6.5. In the defence or settlement of any claim, the Supplier may procure the right for the Buyer to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on five Business Days' notice to the Buyer without any additional liability.
- 6.6. In no event will the Supplier, its employees, agents and subcontractors be liable to the Buyer to the extent that the alleged infringement is based on:
  - a. a modification of the Subscription Services or Documentation by anyone other than the Supplier;
  - b. use of the Subscription Services or Documentation in a manner contrary to the instructions given by the Supplier; or

- c. use of the Subscription Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

6.7 The foregoing states the Buyer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for infringement of the Intellectual Property Rights of any third party.

## 7. Warranties and Liability

7.1. The Supplier warrants that:

- a. the Subscription Services will function substantially as described in the Documentation; and
- b. the SaaS Services will be provided with reasonable skill and care.

7.2. If the Subscription Services do not function substantially in accordance with the Documentation, the Supplier will, at its option, either:

- a. modify the Subscription Services to conform to the Documentation; or
- b. provide a workaround solution that will reasonably meet the Buyer's requirements.

If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate the Contract by giving written notice to the other party, in which case the Supplier will refund to the Buyer all applicable Fees pre-paid to the Supplier in relation to the Subscription Services on a pro rata basis. Such correction or substitution constitutes the Buyer's sole and exclusive remedy for any breach of the warranty set out in clause 7.1.

7.3. The Supplier will not be liable for a breach of the warranty in clause 7.1 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other Supplier instructions, or modification or alteration of the Subscription Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

7.4. Notwithstanding clause 7.1, the Supplier does not warrant:

- a. that the Buyer's use of the Subscription Services will be uninterrupted or error-free;
- b. that the Supplier will support, maintain or continue to offer the Subscription Services;
- c. that the Subscription Services, Documentation and/or the information obtained by the Buyer through the Subscription Services will be in customised formats specific to the Buyer, or meet the Buyer's requirements except to the extent that those requirements have specifically been agreed in writing between the parties.

7.5. Except as expressly set out in this Attachment 3, the SaaS Services and the Documentation are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the SaaS Services are expressly excluded.

7.6. The Buyer acknowledges that:

- a. it remains fully responsible for any act or omission of the Authorised Users; and
- b. no Authorised User may make a claim relating to this Attachment 3 provided that where any Authorised User suffers any loss or damage, which, if suffered by the Buyer would be recoverable from the Supplier, then the Buyer may make that claim on behalf of the Authorised User.

**APPENDIX 1 –SERVICE DETAILS**

**1. Software**

“Toitū Emanage” is a software tool for recording, calculating, managing and reporting greenhouse gas emissions.

**2. Initial Subscription Term**

The Initial Term of this Contract.

**3. Renewal Term**

The Renewal Term of this Contract.

**4. Related Users and Territory**

The Buyer will be entitled to identify the number of Related Users based on the Buyer’s Membership Level.

Buyer and Related Users	Territory
Buyer	New Zealand
Related Users: 2	New Zealand

**5. Service Levels**

The Supplier will use reasonable commercial endeavours to ensure the Subscription Services are available 24 hours a day, seven days a week, except for:

- (a) planned maintenance, including Microsoft automatic updates on any day between the hours of 5am and 6am (NZST), or where at least 48 hours’ prior notice has been given to the Buyer; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Buyer at least 6 Normal Business Hours’ notice in advance.

**APPENDIX 2 – SUPPORT SERVICES****A. Definitions**

For the purposes of this Appendix 2:

**Fault** means a failure of the Subscription Service to function substantially as described in the Documentation;

**Fault Classification** means the classifications specified in the table below:

<b>Fault Classification</b>	<b>Description</b>
<b>Priority 1</b>	The Subscription Service is down or unavailable. The Subscription Service is inoperable, seriously impacted or data is lost or destroyed.
<b>Priority 2</b>	Performance or availability is critically degraded, with major disruption to operation. A Subscription Service feature is inoperable or the Subscription Service is severely restricted in its use.
<b>Priority 3</b>	Performance or availability is non-critically degraded, with minor disruption to operation.
<b>Priority 4</b>	A minor problem causing minimal disruption to operation.

**Support Services** means:

- (c) providing and maintaining the Supplier's hosting environment for the provision of the Subscription Services;
- (d) advice on rectifying bugs or deficiencies of an inherent nature in the Subscription Service;
- (e) the investigation and diagnosis of Faults; and
- (f) the repair and correction of Faults,

but does not include any additional services.

**B. Provision of Support Services**

- (a) The Supplier will provide the Support Services by e-mail or telephone during Normal Business Hours. Fault logging facilities will be provided via the following email: info@toitu.co.nz.
- (b) The Support Services do not include services provided by the Supplier relating to or resulting from:
  - (i) time spent travelling to the Buyer's site where the Subscription Services are being used;
  - (ii) misuse of the Subscription Services or failure to use the Subscription Services in accordance with the Documentation or this Attachment 3;
  - (iii) unauthorised attempts to repair, replace, modify or maintain the Subscription Services by persons other than the Supplier;
  - (iv) support provided outside Normal Business Hours;
  - (v) fluctuations in external power supplies or faults in communications networks;

- (vi) failure by the Buyer to operate the Subscription Services in accordance with any environmental conditions specified by the Supplier.
- (c) The Buyer will:
  - (i) promptly report to the Supplier all Faults which the Buyer discovers via the email Fault logging facility referred to in Part 2(a) of this Appendix;
  - (ii) ensure that:
    - (A) a system administrator is available to be the prime point of contact with the Supplier in the event of any Faults or queries;
    - (B) the system administrator has a good understanding of the Subscription Services and its operation;
  - (iii) make all reasonable efforts at investigation and diagnosis of Faults before contacting the Supplier;
  - (iv) maintain a list of all Subscription Services problems to assist with the diagnosis and resolution of Faults;
  - (v) when notifying the Supplier of Faults, correctly classify the nature and severity of the Fault in accordance with the Fault Classifications.

**C. Service Levels**

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The following Service Levels will apply to the provision of Support Services:

- (a) Fault logging email facility will be available 24 hours per day, 7 days per week, 365 days per year;
- (b) Response (via phone or email) and resolution time in relation to a Fault logged via the email facility are as follows:

Fault Classification	Response Time (during Normal Business Hours)	Resolution Time (during Normal Business Hours) *
Priority 1	One hour	One Business Day
Priority 2	One hour	One Business Day
Priority 3/4	One hour	Five Business Days

\*The resolution times set out above will be extended by adding any time period resulting from the matters listed in Parts 2(b)(i) – (vi) of this Appendix.

**D. Escalation**

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Any failure by the Supplier to provide any Support Service in accordance with this Attachment 3 will be dealt with and, if required by either party, escalated, in accordance with the following table:

Supplier Escalation Contact	Buyer Escalation Contact
Marcus Tham	Cheon Ling